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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN LEROY PHILLIPS,

Defendant and Appellant.

F044062

(Super. Ct. No. F03902338-3)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Fresno County. Gary S. Austin, Judge.

Lora Fox Martin and E. Katherine Dashiell, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, J. Robert Jibson and Janine R. Busch, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Buckley, Acting P.J., Cornell, J. and Gomes, J.

## **INTRODUCTION**

Appellant John Leroy Phillips challenges his conviction for unlawfully taking and driving a vehicle, contending the trial court erred in denying his motion for acquittal because there was insufficient evidence of nonconsensual taking. We disagree and will affirm the judgment.

## **STATEMENT OF THE CASE AND FACTS**

The evening of September 3, 2001, Jose Yanez was riding his bicycle in rural Fresno County. The bike was equipped with a flashing red rear light, which was activated. A car driven by Phillips hit Yanez from behind, tossing him onto the hood of the vehicle and cracking the windshield. Yanez's arms and legs were cut and bleeding and one leg was broken.

Phillips stopped the car, a white Mustang convertible, and asked Yanez where he lived. Yanez told him and Phillips had him climb into the car. After driving for four or five miles, Phillips stopped and made a phone call. He then drove Yanez to a field and ordered him to get out of the Mustang. Phillips left in another vehicle driven by his sister. Yanez went to a nearby house for assistance.

After the police and an ambulance were called, Yanez went back to the Mustang. Police found him lying on the trunk of the car, bloody and in obvious pain. Yanez described Phillips to the officers and later identified him.

Larry Floyd testified that he had several vehicles on his property on September 3, 2001. One of those vehicles was a 1986 white Mustang convertible that was registered in the name of David Guillen. On September 3, the Mustang was parked at Floyd's residence and the keys were in the car. Floyd never gave Phillips permission to take or drive the Mustang.

When asked if he was the owner of the Mustang, Floyd responded, "Well, I was going to be." Floyd testified he had loaned Guillen \$500 and was given the Mustang to hold as security for repayment. If Guillen repaid the loan, Guillen "got the car back." If

Guillen failed to repay the loan, title to the car would transfer to Floyd. In anticipation of the transfer of title, Floyd had begun working on the Mustang and had some tools stored in the car.

Phillips was at Floyd's residence the afternoon of September 3, 2001. He was drinking and appeared to be under the influence. Phillips asked to borrow the Mustang; Floyd refused the request. About an hour after Phillips left, Floyd discovered the Mustang was gone. Floyd called the authorities and reported the car missing.

The morning of September 4, 2001, Floyd received a call from Phillips. Phillips told Floyd he had been in a hit-and-run accident and wrecked the Mustang. Phillips offered to pay for the car. Floyd told Phillips to turn himself in to the authorities, which Phillips did.

At the conclusion of the People's case, Phillips moved to dismiss the charges on the basis that Floyd was not the owner of the Mustang. The trial court denied the motion stating, "there must exist a specific intent to permanently or temporarily deprive the owner of title or possession, so it is really a crime against possession."

Phillips was convicted of unlawfully taking and driving a vehicle (Veh. Code, § 10851, subd. (a)),<sup>1</sup> and leaving the scene of an accident (§ 20001, subd. (a)).

### **DISCUSSION**

Phillips initially asserted on appeal that the corpus delicti rule was not satisfied because the People had failed to establish nonconsensual taking. In supplemental briefing and in oral argument, Phillips withdrew the corpus delicti argument and asserted instead that the trial court erred in denying his Penal Code section 1118.1 motion for acquittal. He contends the trial court erred because there was insufficient evidence to establish that he took the Mustang without the consent of the owner.

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<sup>1</sup> All further references are to the Vehicle Code unless otherwise specified.

In reviewing a challenge to the sufficiency of the evidence, we determine whether “a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt.” (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) In making this determination, the reviewing court must determine whether from the evidence, including all reasonable inferences to be drawn therefrom, there is substantial evidence of each element of the offense. (*Ibid.*) When a trial court rules on a motion for acquittal, the same standard is applied. (*Id.*, fn. 13.)

Section 10851, subdivision (a) provides in relevant part that “Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, ... is guilty of a public offense ....” A violation of this section requires proof of a specific intent to deprive the owner of the car of possession or title for a temporary or permanent period. (*People v. Clifton* (1985) 171 Cal.App.3d 195, 199.)

Phillips contends that because Guillen, the owner of record of the Mustang, did not testify, the prosecution failed to prove the nonconsensual taking.

The fact that Floyd was not shown on any formal documentation as the owner of the Mustang at the time of the taking does not fatally undermine the indicia of ownership. Ownership of a vehicle may be established by indicia other than documentation on file with the Department of Motor Vehicles. (*People v. Clifton, supra*, 171 Cal.App.3d at p. 200.) In *Clifton*, the party considered the owner for purposes of section 10851 did not appear on the title or “pink slip,” had not submitted a notice of transfer to the DMV, and was not shown on the registration form. (*Clifton*, at p. 200.)

If Floyd and Guillen had formalized their arrangement by filing appropriate documentation with the DMV, Floyd would be the legal owner, with Guillen as the registered owner. The term “owner,” as applied to motor vehicles, commonly is

understood to refer to both legal and registered owners. (*Martin v. State Farm Mutual Auto. Ins. Co.* (1962) 200 Cal.App.2d 459, 469.)

Criminal statutes are to be construed so as to give a fair import to their terms. (*People v. Clifton, supra*, 171 Cal.App.3d at p. 201.) In construing ownership in the context of a charge of vehicle theft, this court has stated that courts should “look[ ], in part, to evidence of exclusive dominion and control.” (*People v. Kahanic* (1987) 196 Cal.App.3d 461, 464.) Floyd testified to his exclusive possession and control of the Mustang at the time Phillips took the vehicle and that he never gave Phillips permission to take the vehicle. Under the Vehicle Code, an “owner” includes (1) a person having all the incidents of ownership, or (2) the person entitled to possession under a security agreement. (*People v. Clifton, supra*, 171 Cal.App.3d at p. 200.)

As to Phillips, Floyd had the right of possession and stands in the position of owner. (*People v. Edwards* (1925) 72 Cal.App. 102, 116.) Phillips, by his actions, implicitly acknowledged Floyd’s ownership interest. Phillips asked Floyd’s permission to borrow the Mustang; Phillips called Floyd to tell him the Mustang was damaged in an accident; and, tellingly, Phillips offered to pay Floyd for the damage to the car.

Although Phillips relies upon *People v. Rodgers* (1970) 4 Cal.App.3d 531 for the proposition that a nonconsensual taking has not been established, that case is factually distinguishable. In *Rodgers*, the car was registered in the wife’s name. The husband parked the car in May, left to go out of town for a few days, and upon his return the car was no longer where he had parked it. The defendant was arrested in November and testified that a female friend had loaned him the use of the car, he had been driving it for six months, and he had keys to the car. The wife did not testify. (*Id.* at pp. 532-533.)

In *Rodgers*, both the husband and wife had equal dominion and control over the car. In addition, the defendant in *Rodgers* had driven the car for six months, during which time he had received two traffic tickets and no report of a stolen vehicle had been made until November. (*People v. Rodgers, supra*, 4 Cal.App.3d at p. 533.) Floyd, on

the other hand, had exclusive dominion and control over the Mustang at the time it was taken and made a report of a stolen vehicle within hours of its taking by Phillips.

We conclude Floyd's testimony furnished substantial evidence of a nonconsensual taking by Phillips.

#### **DISPOSITION**

The judgment is affirmed.